STATE OF MICHIGAN

COURT OF APPEALS

IRMA C. MIEDEMA and ERNIE J. MIEDEMA,

Plaintiffs-Appellants,

v

GUEST SERVICES, INC. and HOLIDAY HOSPITALITY FRANCHISING, INC., formerly known as HOLIDAY INNS FRANCHISING, INC.,

Defendants-Appellees.

UNPUBLISHED
August 10, 2004

No. 247431
Mecosta Circuit Court
LC No. 01-014406-NO

Before: Fort Hood, P.J., and Donofrio and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a judgment of no cause of action entered following a jury trial. Plaintiffs tripped and fell over a hose stretched across a sidewalk at a Holiday Inn in Big Rapids, Michigan. Irma Miedema suffered a broken hip as a result of her fall. Plaintiffs asserted at trial that just as they were about to step over the hose, it rose up suddenly to just below knee level. Plaintiffs brought suit alleging that defendants had been negligent in the handling of the hose. Because we cannot find that the trial court abused its discretion in allowing defendant to introduce a videotape into evidence, we affirm.

Plaintiffs' sole argument on appeal is that the trial court abused its discretion when it admitted into evidence a videotape introduced by defendants. The court ruled the videotape constituted demonstrative evidence. Plaintiffs argue the court erred because the video was actually a reenactment, which did not faithfully replicate the events giving rise to this case. We disagree. The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Chmielewski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made, *Shuler v Michigan Physicians Mutual Liability Co*, 260 Mich App 492; 509 NW2d 106 (2004), or that the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias, *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001). Reversible error may not be predicated on an evidentiary ruling unless a substantial right was affected. MRE 103(a); *Miller v Hensley*, 244 Mich App 528, 531; 624 NW2d 582 (2001). Thus, plaintiffs have a strong burden to meet.

Demonstrative evidence is admissible if it bears substantial similarity to a factual issue at trial, even if the evidence does not faithfully replicate an actual event. *Sumner v General Motors (On Remand)*, 245 Mich App 653, 657; 633 NW2d 1 (2001). On the other hand, where evidence is offered as a reenactment of the actual event, the evidence is admissible only if it faithfully replicates the event. *Id*.

The video shows Donovan Netherland, the employee who was using the hose over which plaintiffs tripped, taking a hose to various locations around the hotel grounds and lifting, shaking, and jerking the hose with great force in an attempt to cause the hose to jump from the pavement up to knee level. The tape shows merely the hose being taken to various spots and moved in different ways. It does not depict anyone interacting with the hose, other than Netherland himself, nor does it appear to reenact the actual events giving rise to this suit. Rather than depicting how events occurred on the date of the accident, the video simply demonstrates the difficulty of making the hose rise off of the ground when placed as defendants claim the hose was placed on the date in question. Plaintiffs were afforded an opportunity to object and could have introduced a videotape of their own making. Thus, whether the video constitutes demonstrative evidence rather than a reenactment is almost irrelevant to our conclusion, though for purposes of this appeal we conclude that the videotape constitutes demonstrative evidence rather than a renenactment.

The events depicted bear a substantial similarity to how the events of the accident were described at trial. Netherland advised the court that while he did not know exactly where he was along the route he took on the date in question at the time plaintiffs fell, he did know the specific route he had taken with the hose in his hands. He stated that he followed this exact route in the videotape demonstration. Netherland had been somewhat inconsistent about the length of the hose, however, in his deposition he had estimated the length of the hose to be 50 feet. The hose used in the videotape is substantially longer than 50 feet. At trial, Netherland testified that he believed his initial estimate was wrong, because based on the long arc the hose took when he looked back at it after the accident occurred, he believed that it must have been longer than 50 feet.

The testimony of plaintiffs' own witnesses supported the claim that the hose over which plaintiffs tripped was much longer than 50 feet.[1] Indeed, plaintiff Ernie Miedema testified that the hose was much longer than Netherland had estimated, and stated that he believed that the hose was at least 100 feet long.

Additionally, Netherland identified a hose defendants' introduced into evidence at trial as being the hose he had used in the video, and stated that this hose was very similar to, if not the exact same hose as, the one he had used on the date of the accident. Defendants' manager in charge of the hotel's front desk on the date of the accident was even more certain, identifying the

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[1] Plaintiffs' daughter testified that Netherland was at least 100 to 150 feet away from plaintiffs at the time the accident occurred, and plaintiff's son-in-law estimated Netherland to have been 70 to 80 feet away from the hotel entrance near which the plaintiffs fell at the time plaintiffs drove into the hotel.

hose admitted into evidence as being the exact hose she had seen Netherland using at the time of the accident.

Further, Netherland, Ernie Miedema, and the plaintiffs' son-in-law all testified that at the time of the accident, the hose lay in large arc from the spigot to the point where Netherland was standing with the spray nozzle. Netherland testified that this arc had been replicated in the test done on the video. Netherland additionally testified that on the date of the accident he believed that he had taken the hose out to the first location where he was to water, with the hose coiled up, and that he had then pulled the hose to the other locations without carrying the coils from that spot. Netherland testified that this same procedure had been followed when making the videotape.

Thus, the video depicts Netherland using the same or a very similar hose as was involved in the accident, following the same route he testified he took on the date of the accident, and laying the hose out in the same manner as it was laid out on that day. Given these facts, we find that the circumstances of the videotape bore substantial similarity to the acts giving rise to this suit.

Thus, the challenged video constitute demonstrative evidence, and the events depicted in the video bore a substantial similarity to the events giving rise to this case. Accordingly, we hold that the trial court did not abuse its discretion in admitting the videotape into evidence.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello